

Executive Officer Summary Report
November 8, 2006

Item No.	11
Subject:	Supplemental Environmental Projects (SEPs): The Regional Board will review current practices for allowing, developing, selecting, funding and managing SEPs derived from Administrative Civil Liability Actions and other related enforcement actions. (Mark Alpert)
Purpose:	The Regional Board will review the current process to develop, select, fund, and manage SEPs and have the opportunity to provide direction in improving the process for future actions that may involve SEPs.
Public Notice:	The Agenda notice for the November 8, 2006 Regional Board Meeting distributed on October 13, 2006 and posted on the Regional Board website serves as public notice for this item.
Discussion:	<p>The selection, funding, and management of SEPs can be challenging for all involved, including the Regional Board. This was recently illustrated when the Regional Board considered a proposal to fund several SEPs worth up to \$50,000 that was made as part of a settlement of an ACL. The discussion on the merits of the specific projects and the process to select and fund them highlighted the lack of a clear, consistent process to identify, select, fund, and manage SEPs.</p> <p>If the Regional Board continues to accept and approve the funding of SEPs as part of settlement of enforcement actions, a consistent process to select and manage SEPs is appropriate. It would help all parties interested in SEPs to be aware of the criteria for, and limitations involved with, SEPs, whether the projects are selected from a pre-approved list (library) or presented by the discharger and/or interested persons at the time of an ACL hearing. For SEPs that are approved, adequate funding should be identified and committed to improving the necessary implementation, management, tracking, and oversight.</p>

A staff report titled: SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP): Examination of current practices for allowing, developing, selecting, funding and managing SEPs Derived from Administrative Civil Liability Actions, dated November 8, 2006, reviews the available policies and procedures, and recommends the Regional Board standardize its approach to the selection and management of SEPs (Document 1).

In response to the agenda notice, the Regional Board received letters from one public entity and two non-profit groups requesting to be considered as recipients of SEP funds.

KEY ISSUES:

- 1) When is it appropriate to allow dischargers to divert funds from civil liability to be fund SEPs?
- 2) Should SEPs be selected for funding from an established library or similar inventory of proposed projects; from proposals by the discharger under enforcement action; or from impromptu proposals from the public during ACL proceedings?
- 3) How should the Regional Board insure that the discharger meets their obligations for the tracking, reporting, and the overall success of a SEP?

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Staff report titled "SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP): Examination of current practices for allowing, developing, selecting, funding and managing SEPs Derived from Administrative Civil Liability Actions"
2. San Diego Oceans Foundation (August 8, 2006)
3. Unified Port of San Diego (August 16, 2006)
4. Southern California Wetlands Recovery Project (October 12, 2006)

RECOMENDATION: Regional Board staff will provide recommendations at the conclusion of the discussion of this item.